

### **REMARKS/ARGUMENTS**

In view of the remarks herein, favorable reconsideration and allowance of this application are respectfully requested. Claims 1-3, 5-10, and 12-16 are pending for further examination.

Claims 1-3, 7-10, and 12-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Crowley (U.S. Patent No. 6,096,962) in view of Koguchi (U.S. Patent No. 5,148,419) and Shuster (U.S. Patent No. 6,270,409), and claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Crowley in view of Koguchi and Shuster and further in view of Ishikawa et al. (U.S. Patent Publication No. US 2001/0016510). These Section 103 rejections are respectfully traversed for at least the following reasons.

Claims 1 and 8-9 require “incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.” Claim 10 similarly requires “counting the number of times the currently selected set of phrase data has been continuously selected; [and] re-selecting a new set of phrase data if the currently selected phrase data has been continuously selected more than a predetermined number of times.” The prior art of record, alone and in combination, fails to disclose these features of the independent claims. Thus, the alleged combination of Crowley, Koguchi, and Shuster fails to render obvious the invention of claims 1 and 8-10 (and also their respective dependents).

The Office Action admits that Crowley does not disclose the above-noted features and introduces Shuster to make up for this deficiency with respect to Crowley. Shuster relates to “a gaming method and apparatus wherein the participants are guaranteed to win a minimum amount after a fixed period of time or a predetermined number of games” (abstract). Thus, it is perhaps not surprising that Shuster discloses a counter of some kind. Indeed, as noted at col. 4, lines 10-

14, “If no winning combination is achieved, the counter increments again by one 24. IF [sic] the wheels stop on a winning combination, the counter will reset to zero.” In other words, in Shuster, if a winning combination is not reached, a counter is incremented; however, if a winning combination is reached, the counter is reset to zero. Thus, according to Shuster, a payout is triggered when a winning combination is reached either through the course of normal play or via a “forced payout” that occurs when the counter reaches a predetermined threshold.

By contrast, claims 1 and 8-9 require “incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree.” Shuster increments its counter when any non-winning combination is reached, notwithstanding the result of the previous play. Furthermore, when two winning combinations are achieved in a row, the counter of Shuster is not incremented. Thus, Shuster does not teach or suggest a counter that is incremented based on a previous selection. Substantially the same arguments apply with respect to claim 10, which incorporates similar features to these limitations of claims 1 and 8-9.

It is also noted that the alleged motivation for combining the references provided in the Office Action appears to be somewhat dubious. In particular, the Office Action alleges that “one would be motivated to [make the combination] to have a complete sound database and a system whereby there is a count of the amount of data selected from the database.” One of ordinary skill in the art at the time of the invention arguably might have been motivated to develop a complete sound database. One of ordinary skill in the art at the time of the invention arguably might also have been motivated to keep a count of the amount of data selected from such a database. However, the alleged three-way combination of Crowley/Koguchi/Shuster would not lead to such a count being made at all, at least insofar as the counting techniques of Shuster relied upon by in the Office Action actually relate to keeping track of losses and forcing wins within a single

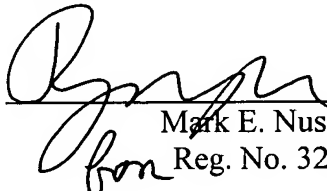
gambling session rather than to keeping count of the data selected from a database -- much less keeping fresh the supply of background music in a game, as claimed. Accordingly, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have been motivated to make the combination as alleged in the Office Action.

In view of the above, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

For at least the reasons set forth above, Applicant believes that all of the pending claims are in condition for allowance. Thus, allowance of this application is earnestly solicited. Should the Examiner have any questions regarding this case, or deem that any formal matters need to be addressed, the Examiner is invited to call the undersigned attorney at the phone number below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:  (#41,426)  
Mark E. Nusbaum  
Reg. No. 32,348  
for

MEN/JR:lmj  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100